

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 242 of 2018

IN THE MATTER OF:

Francis John Kattukaran

...Appellant

Versus

The Federal Bank Ltd. & Anr.

...Respondents

Present:

For Appellant : **Mr. Varun Singh, Mr. Gaurav Nair and Ms. Pranati Bhatnagar, Advocates**

For 1st Respondent: **Mr. Abhishek Anand, Advocate**

For 2nd Respondent : **Mr. George V.M., Advocate**

O R D E R

13.11.2018 Learned counsel for the parties submit that the ‘Committee of Creditors’ by majority vote of 100% has approved the proposal and the ‘resolution professional’ has moved an application under Section 12A of the I&B Code.

However, we are of the view that the ‘resolution professional’ cannot file an application for withdrawal of an application under Section 7 or 9 or 10 of the I&B Code. As per Section 12A, as quoted below, it is the applicant who can only file such an application for withdrawal on which the Adjudicating Authority may pass an appropriate order.

“12A *The Adjudicating Authority may allow
the withdrawal of application admitted under
section 7 or section 9 or section 10, on an*

application made by the applicant with the approval of ninety per cent voting share of the committee of creditors, in such manner as may be prescribed.”

Therefore, the application for withdrawal can be filed only by the applicant, who initially filed application under Section 7 or 9.

Learned counsel for the applicant submits that as per Regulation 30A of ‘*Insolvency and Bankruptcy Board of India (Insolvency Regulation Process for Corporate Persons) Regulations, 2016*’, the ‘resolution professional’ can move the application, which reads as follows:

“30 A. *Withdrawal of application.*

- (1) *An application for withdrawal under section 12A shall be submitted to the interim resolution professional or the resolution professional, as the case may be, in Form FA of the Schedule before issue of invitation for expression of interest under regulation 36A.*
- (2) *The application in sub-regulation (1) shall be accompanied by a bank guarantee towards estimated cost incurred for purposes of clauses (c) and (d) of regulation 31 till the date of application.*
- (3) *The committee shall consider the application made under sub-regulation (1) within seven days of its constitution or seven days of receipt of the application, whichever is later.*

- (4) *Where the application is approved by the committee with ninety percent voting share, the resolution professional shall submit the application under sub-regulation (1) to the Adjudicating Authority on behalf of the applicant, within three days of such approval.*
- (5) *The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (4).*

However, Regulation 30A cannot over-ride the substantive provisions of Section 12A according to which the ‘applicant’ can only move application for withdrawal of the application before the Adjudicating Authority and not by the ‘resolution professional’.

Therefore, if the application for withdrawal is filed by the applicant in the present case, in such case the Adjudicating Authority will decide the case in accordance with the provisions of Section 12A .

Post the matter ‘for orders’ on 11th December, 2018 to report the development.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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